

Regulatory Impact Assessment Tool Review

Regulatory Tools

TABLES Project 2012: Mini reviews	
Task 1: Basic information	
Name of the tool	Regulatory Impact Assessment
Type of tool (list all that apply)	Regulatory, Mapping, Valuation, Engagement
Group members	<ol style="list-style-type: none"> 1. Alister Scott 2. Jonathan Baker
Please provide a brief synopsis of the tool	<p>Regulatory Impact Assessment may be defined as ‘a tool which informs policy decisions. It is an assessment of the impact of policy options in terms of the costs, benefits and risks of a proposal’ (Cabinet Office, 2003).</p> <p>Conceptually, RIA is based on six pillars (EPC, 2001).</p> <ul style="list-style-type: none"> • RIA requires a clear identification of a specific social, economic, or environmental problem and a convincing justification of the value and likely effectiveness of government intervention. • RIA requires an extensive and transparent consultation with all stakeholders to widen public debate about government intervention, to identify the costs and benefits of regulatory proposals and to minimise the risk of “regulatory capture.” • RIA requires a systematic, empirical analysis of costs, benefits, and alternatives that take account of the “real world” impacts of regulatory strategies on stakeholders, public health and safety, and the environment. • RIA requires a focus on achieving regulatory solutions that maximise the overall net welfare of all citizens. • RIA requires common, standard, practical operating procedures that ensure consistency of analysis throughout all parts of government. • RIA requires clear, structured communication and accountability to decision-makers of the consequences of choosing specific regulatory goals or strategies <p>RIA can take different forms and is frequently made up of several procedures (e.g. competitiveness, environmental, health and administrative burden assessments). RIA is a tool that seeks to improve regulatory quality and reduce regulatory burden, but also promotes environmental policy integration and sustainable development. (Hertin, 2009:413).</p> <p>RIA procedures are typically set out as a linear process with a sequence of analytical steps that mirror the phases of problem solving. It normally begins with the identification of a policy problem or objective; it then proceeds to an analysis of options and respective impacts which leads to a weighing up of alternatives with a final selection of the ‘best’ policy choice</p> <p>However RIA practice is an activity where knowledge and politics are inextricably linked, and which combines evidence, logic, norms, judgement and rhetoric in a certain policy</p>

space. Therefore, neither policy documents nor those involved in the analysis should expect RIA to produce a single best choice.

Task 2: Use of the tool

Position / Use	Stage	Currently used	Could be used
	Ideas	Y*	Y*
	Survey	Y	Y
	Assess	Y	Y
	Policy / decision	Y*	Y*
	Implement	Indirectly	
	Evaluate	Indirectly	Y*

The stages with an asterix [*] next to them indicate stages where there are identified failures in application. RIA is involved in both the development of ideas and in shaping the policy and decision and also post impact assessments but it is accepted that there are some limitations in how this is done in practice.

Task 3: Existing literature about the tool

Are you aware of any KEY policy and / or academic literature evaluating your tool?

There is a growing policy and academic literature on RIA.

Ballantine, B. and Devonald B. (2006) Modern Regulatory Impact Analysis: The experience of the European Union, *Regulatory Toxicology and Pharmacology* 44, 57-68

Cabinet Office (2003), *Better Policy-Making: A Guide to Regulatory Impact Assessment* (Regulatory Impact Unit, London).

EPC, 2001. Occasional Paper. Regulatory Impact Analysis: Improving the Quality of EU SS Activity. Brussels, Belgium

Gibbons., M. and Parker, D. (2012): Impact assessments and better regulation: the role of the UK's Regulatory Policy Committee, *Public Money & Management*, 32:4, 257-264

Hertin, J., Jacob, K., Pesch, U. and Pacch, C. (2009) The production and use of knowledge in regulatory impact assessment – An empirical analysis *Forest Policy and Economics*, 11, 413-421

HM Government (2011a), *Impact Assessment Overview* (BIS, London).

HM Government (2011b), *IA Toolkit: How to do an Impact Assessment* (BIS, London).

HM Government Treasury http://www.hm-treasury.gov.uk/economic_data_and_tools/greenbook/data_greenbook_index.cfm

OECD, 1997. *Regulatory Impact Analysis: Best Practices in OECD Countries*. Organisation for Economic Co-operation and Development, Paris.

OECD, 2001. *Improving Policy Instruments through Impact Assessment*. Sigma Paper 31. OECD, Paris.

OECD (2010), *Risk and Regulatory Policy: Improving the Governance of Risk* (Paris)

Task 4: Your experience of working on the tool

Have you done any

I have undertaken and led a consortium of consultants doing the RIA for common land

<p>research/consultancy work on this tool in terms of its development, testing and/or evaluation?</p>	<p>legislation.</p> <p>Scott, AJ; Taylor K., Short, C. Christie, M. (2004) Regulatory Impact Assessment: Common Land Legislation (DEFRA contract) in conjunction with Gloucester University (CCRU) and Asken Ltd. (£58k)</p>
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Task 5: Incorporating the ecosystem approach (EA) and ecosystem services (ES)

<p>Using examples (from practice, research or consultancy), explain how EA and/or ES are currently incorporated in/by the tool</p> <p><i>If neither approach is currently incorporated, please move to the next question</i></p>	<p>The incorporation of ES/EA into RIA is in its infancy. There is considerable potential for incorporation but as yet no examples are included. There is however a lot of interest in RIA developing in this direction with many practitioners and researchers considering that ES/EA offers significant potential to RIA and vice versa.</p> <p>Examples of ES/EA inclusive RIA and guidance on this topic include:</p> <ul style="list-style-type: none"> • WRI - Ecosystem Services Review for Impact Assessment • Defra (2007) An Introductory guide to valuing ecosystem services.
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<p>How <u>could</u> the ecosystem approach and/or ecosystem services be (further) incorporated within the existing tool?</p>	<p>RIA through its methodological stance is well suited to integrating an ecosystem services framework. Defra 920070 states that it is important to see this as embedded into policy appraisal rather than as an add-on. Here particular emphasis is put on the Treasury green book. http://www.hm-treasury.gov.uk/economic_data_and_tools/greenbook/data_greenbook_index.cfm</p>
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Task 6: Situating the tool within priority questions/criteria arising from the scoping interviews

<p>Explain how the tool can be situated within the priority questions/criteria that arose in the scoping interviews</p>	<p>Priority question/criteria</p>	<p>Does your tool address/implement this question/criteria?</p>
	<p>Language and communication</p>	
	<p>1. Contribution to aiding the development of shared vocabulary within which principles of EA and ES can be shared with multiple stakeholders across built and/or natural environment</p>	<p>RIA provides a legal and potentially transparent framework within which interactions and tradeoffs relevant to the natural and built environment can be consistently presented and consulted upon.</p>
<p>2. Capacity of the tool to develop shared</p>	<p>RIA requires engagement with the public and other stakeholders and to ascertain their views about the</p>	

understandings of the many identities and values of places from the perspectives of multiple visitors, residents and businesses	impact of proposed policy changes. There is therefore some limited scope to bring together the perspectives of various groups.
3. Capacity of the tool to improve or enable engagement across different publics so avoiding the usual suspect problem	Stakeholder engagement is a core requirement of RIA in revised regulations (supported by the Aarhus Convention) and as such there is the potential to engage with those groups that are felt to be most appropriate around the development of new legislation .
Learning from experience/pedagogy	
4. Capacity of the tool to help reveal and value 'hidden' assets that are not recognised by communities or publics that use them	The environmental costs and benefits arising from the legislation will be costed and the economic analyses may highlight important assets.
5. Extent to which tool is building on other tools or EA/ES progress	RIA is a meta-tool and sits within the wider impact assessment methods. By its very nature it should be able to embed ES/EA.
6. Extent to which tool is locally derived or grounded or can be adjusted to closely reflect 'local' context. Is the tool suitable for an open source approach?	RIAs core process and method is not adaptable but the exact way it is met and what information sources it uses are adapted depending on the legislative context. The baseline stage entails the collection and analysis of a significant amount of local information. Local variation and distributional effects are a key consideration.
7. Extent to which the tool is open to interpretation and application in a variety of forms (that reflect 'cultural' differences)	The skeleton of RIA is a legal requirement as are certain processes and outputs, but at its simplest RIA is just a process with substantive variation and quality control issues. In the UK context there is an economic fix with less emphasis on qualitative data.
Developing and selecting tools	
8. Is the tool dependent on a specific funding source? How onerous is the application procedure? What are the chances of success?	RIA is a legal requirement and the funding for RIA will be linked to the legislative costs. The application procedure is reasonably onerous and tends to be the preserve of consultants.
9. Does skills development (essential or optional?) and support exist for the tool or is there a body to ensure the optimal and correct use of it?	RIA is a firmly established process and many hundred assessments are undertaken in the UK each year. There is therefore an existing skills base. There are also established quality assessment criteria for RIA from OECD and the EU as well as a wide range of guidance and support from various bodies. The separation of RIAs from those actually writing the legislation has significant implications for the timing of RIAs and their ability to influence the legislation in the way intended. .
10. Extent to which current statutory hooks can be exploited by the tool or will benefit the quality or	RIA is a legal requirement so there is a very clear hook there.

application of the tool (e.g. NNPF's duty to cooperate, SUDS, ecol. networks)	
Informing resultant policies effectively	
11. Extent to which the tool informs or improves policies/decisions. What does the tool cover? (full range of positive and negative economic, social and environment impacts / tradeoffs?)	RIA focuses on the positive and negative environment and human health impacts of legislation and should consider the full spectrum of social, economic and environmental aspects including trade-offs from the legislation as well as considering these in light of alternative options and business as usual. A review of practice suggests that it can be seen as a hurdle to be jumped rather than as valuable support tools. Over 50% of policy makers did not believe it makes a positive difference to policy (National Audit Office 2010).
12. How does the tool link into the planning system (applications and processes). At what cost / extra burden?	RIA links into the legislative process and is mandatory for ALL legislation and guidance.
Delivering management objectives	
13. Suitability or capacity of the tool to assist with managing visitor needs and pressures within protected areas / the considered area? How?	RIA would only deal with this if legislation was in this area or had impacts on recreation and green space. Recent acts in Scotland for the National parks etc.
Local ownership/new governance	
14. To what extent can the tool assist in developing statutory plans (local and management plans) and improve ownership and use by publics?	It deals primarily with legislation and as such can be an umbrella for forthcoming planning legislation such as the growth and infrastructure bill
15. To what extent does/could the tool contribute to a new form of community governance in management of the environment?	There may be scope and value in third parties undertaking their own impact assessments.
Improved tools: understanding flows, interconnections and spatial issues	
16. Capacity to improve spatial understandings of the flows and interactions of various ecosystem services between sectors and at different scales	The core analytical stages of RIA (on costs and benefits and impact of alternatives) are all based on a comprehensive understanding of natural environmental processes. Ecosystem services are starting to be considered within these stages and has significant potential, but is at a relatively early stage of development and may not be relevant in every RIA.
17. Capacity of the tool to reconcile assessments of options and benefits across different scales (and sectors)	RIA is specifically tasked with the assessment of 'reasonable alternatives' as well as the impact of the proposed intervention. There is limited cross scale impacts given that it is operating at the national level As such the opportunity to reconcile across different sectors and scale is limited to the nature of the legislation.
18. Extent to which the tool is	RIA is limited to the legislation it is assessing. . There

capable or can be manipulated to work across sectoral and administrative boundaries	are however requirements to engage with relevant stakeholders, including those who are trans-boundary. Relevant stakeholders are likely to be potentially affected organisations and this is not limited to sectoral or administrative boundaries.
19. Extent to which the tool can handle data shortages and gaps (or is effectiveness considerably compromised?)	The quality of an RIA is not determined by the quality of the data (rather the nature of the process). Good quality data is important to provide an adequate baseline and understanding of the impacts – based on qualitative and quantitative data sources. There are mechanisms such as stakeholder engagement, using indicators or proxies, etc which allow practitioners to manage data gaps.
20. To what extent has/could the tool put landscape/nature conservation and designated species/sites on the radar (positively or resulting in resentment?)	RIA requires the consideration of environmental impacts (costs and benefits) but the interpretation of these can be limited. There is a wider issue of political resentment of RIA as a hurdle or set of boxes to be ticked

RIA is an inherently flexible tool as it consists of a few key stages. It is therefore potentially well able to deal with a wide range of issues. Its exact ability to deal with specific issues is largely dependent upon how it is used.

Task 7: A SWOT analysis of the tool

<p>Referring back to the relevant policy and academic literature (listed in Task 3), plus your own expertise (listed in Task 4) and the way in which the tool is situated within the priority questions/criteria (listed in Task 6), please complete a summary SWOT analysis ensuring that each point is well justified</p>	<p>Strengths <i>(of the tool in delivering intended outcomes)</i></p> <p>RIA can contribute significantly to the goal of improved regulatory quality by</p> <ul style="list-style-type: none"> • improving the cost effectiveness of decisions, • reducing the number of poor quality and unnecessary decisions, • improving the transparency of decisions, • enhancing consultation with affected groups, and • improving governmental coherence and inter-ministerial communications
	<p>Weaknesses <i>(factors that detract from the tool's ability to deliver intended outcomes)</i></p> <ul style="list-style-type: none"> • RIAs are often written too late in the legislation process, effectively to justify a policy option already chosen by the minister • RIAs seen as box ticking exercise. • Absence of sanctions for non-compliance. • Lack of skills and training and knowledge to understand full impacts of legislation Work by Gibbons and Parker (2012) revealed many RIAs were deficient. • Quality control poor, again reflecting the skills of the overseer. • Politicians do not want extra information and see RIA as a hurdle to jump. • Widespread lack of commitment and resources to RIA. While few have formally expressed the view that RIA is wholly unnecessary, it is often seen as a 'side event' of the political process (Hertin et al 2009) • The focus of RIA methodology on prediction and precision tends to narrow down the scope of the assessment as it carries with it a dominance of economic valuation and other quantitative methods • Qualitative knowledge tends to be undervalued and few attempts are made to capture uncertainties or explore sensitivities in relation to methods and assumptions.

Opportunities (*consider opportunities for application of the ecosystem approach and services*)

- Risk based approach inherent in RIA lends itself to an ecosystem services assessment.
- ES/EA is an integrating concept which instead of dealing with discrete environmental ‘topics’ considers bundles of services that flow from the environment. It therefore lends itself to incorporation with RIA methodology.
- With ES/EA the description of the environment moves from things to benefits and may be a more persuasive way of framing the environment in RIA.
- ES/EA may be of particular value where there are clear conflicts between traditional environmental and economic arguments within RIA.
- Incorporating ES/EA into SEA helps practitioners and decision-makers to reflect on the impact of the regulation on a range of economic, social and environmental drivers.

Threats (*factors which negatively affect the tool and its outcomes*)

Threat of going down ecosystem services route in RIA to validity of the concept	Seriousness (high, medium, low)	Probability of occurrence (high, medium, low)
The use of ecosystem services language may not resonate with stakeholders.	Medium	Medium
The complexity of ecosystem services may add to already complex process	Medium	High
The contested nature of ecosystem service valuation may not be robust enough for RIA which operates within a legal framework.	Low	Medium
Doing more comprehensive ecosystem services assessment is potentially very resource intensive	High	High
Ecosystem services may not be relevant to all RIAs or all institutional contexts	Low	High
Mitigation and offsetting are more complex than previously; there is also a risk that ecosystem service mitigation may not be compliant.	Medium	Low
Ecosystem services is not be uniformly relevant to all the topics that RIA is required to consider – for example ‘material assets’ and ‘air’.	High	High
Valuation of ecosystem services does not necessarily fit with how decisions are made about spatial planning – which is much more about balancing a wide range of factors, not a cost-benefit calculation.	Medium	Low

Further comments

See the following for a model RIA that has been positively assessed.
<http://archive.defra.gov.uk/rural/documents/protected/common-land/bill-ria.pdf>